

Chairperson John R. Clark
Vice-Chairperson Michael Parks
Parliamentarian Don Maxwell



Commissioners
Michael Beckendorf
John Bond
Helen Chavarria
Ralph Davila
Robert Horton
G.H. Jones

MINUTES

**BRYAN PLANNING AND ZONING COMMISSION
REGULAR MEETING
THURSDAY, JUNE 19, 2008
AT 6:00 P.M.
COUNCIL CHAMBERS, BRYAN MUNICIPAL BUILDING
300 SOUTH TEXAS AVENUE, BRYAN, TEXAS**

Disclaimer: *The meeting minutes herein are a summarization of meeting proceedings, not a verbatim transcription.*

1. CALL TO ORDER.

Chairperson Clark called the regular meeting to order at 6:05 p.m.

Commissioners	Present	2008 Regular Meetings Held	2008 Regular Meetings Attended	Regular Meetings Held During Last 6 Months	Regular Meetings Attended During Last 6 Months
Michael Beckendorf	Yes	12	8	12	8
Johnny Bond	Yes	12	12	12	12
Helen Chavarria	Yes	12	10	12	10
John R. Clark	Yes	12	12	12	12
Ralph Davila	Yes	12	12	12	12
Robert Horton	Yes	12	10	12	10
G. H. Jones	Yes	12	12	12	12
Don Maxwell	Yes	12	9	12	9
Michael Parks	No	12	8	12	8

Staff members present: Mr. Martin Zimmermann, Senior Planner; Ms. Julie Fulgham, Project Planner; Mr. Randy Haynes, Staff Planner; Mr. Michael Gary, Assistant City Attorney; Mr. Dale Picha, Director of Traffic and Transportation; and Ms. Kelli Hill, Planning Intern.

2. HEAR CITIZENS.

No one came forward.

3. RECOGNITION OF AFFIDAVITS FILED IN RESPONSE TO STATE LAW ON DISCLOSURE OF LOCAL OFFICIAL'S CONFLICT OF INTEREST.

Chairperson Clark filed an affidavit in response to state law on disclosure of local official's conflict of interest regarding Consent Agenda item #4E, Replat RP08-12. Chairperson Clark will not participate in deliberation or voting on the Consent Agenda.

4. CONSENT AGENDA.

A. Approval of meeting minutes from workshop and regular meetings on May 8, May 22 and June 5, 2008.

B. Street Closing SC08-03: 1700 block of E. 25th Street M. Zimmermann *A request to permanently close a 48.96-foot wide and 119.03-foot long segment of East 25th Street right-of-way between North Brewer and North Brown Streets in Bryan, Brazos County, Texas.*

C. Master Plan MP08-02: Brazos County Exposition Center Subdivision M. Zimmermann *Proposed Revised Master Plan of Brazos County Exposition Center Subdivision, being 159 acres of land out of T.J. Wooten Survey, A-59 located at the east corner of State Highway 47 and Leonard Road (F.M. 1688) in Bryan, Brazos County, Texas.*

D. Final Plat FP08-11: Brazos County Exposition Center Subdivision M. Zimmermann *Proposed Final Plat of Brazos County Exposition Center Subdivision – Phase 2A, being 3.65 acres of land out of T.J. Wooten Survey, A-59 located on the northwest side of Jones Road between West Villa Maria and Leonard Roads in Bryan, Brazos County, Texas.*

E. Replat RP08-12: Utility Fleet Sales Subdivision R. Haynes *Proposed Replat of Utility Fleet Sales Subdivision, being 42.409 acres land adjoining the southeast side of North Earl Rudder Freeway south of its intersection with F.M. 2818 in Bryan, Brazos County, Texas.*

Chairperson Clark stated that approval of Consent Agenda Item D is contingent upon prior approval of Consent Agenda Item C. He proceeded to read these items into the minute record.

Commissioner Maxwell moved to approve all items on the Consent Agenda. Commissioner Jones seconded the motion.

Chairperson Clark asked if there was any discussion. There was none.

The motion passed with a unanimous vote. Chairperson Clark did not participate in voting on the Consent Agenda, due to a conflict of interest.

5. Rezoning RZ08-12: Key Energy Services, LLC

R. Haynes

A request to change the zoning classification from Agricultural-Open District (A-O) to Planned Development District – Business (PD-B) on 1.907 acres of land adjoining the northwest side of State Highway 21 East between Wallis Road and Crosswind Drive across from Coulter Airfield, being part of Lot 1 in Block 1 of East Brazos Industrial Park – Phase 1 in Bryan, Brazos County, Texas.

Mr. Haynes presented a staff report (on file in the Development Services Department). He stated that the Commission has seen this case before and that the developer has submitted a request to zone this property to Planned Development District – Business, which makes this zoning classification about the same as C-3 (Commercial) District, with the addition of open storage being allowed. Staff recommends approval of the zoning request.

Responding to questions from Commissioner Davila, Mr. Haynes stated that a C-3 classification encompasses C-1 and C-2 classifications as well. He also stated that the applicant has agreed to replace or improve the existing fence to come into compliance with the ordinance.

The public hearing was opened.

Mr. Rabon Metcalf, 1391 Seamiest Lane, College Station, representing the applicant, came forward to speak in support of the request. He stated that the City Council suggested he look at another option of tying the zoning to exactly what the applicant would like to do with the property. He also stated that he worked with staff to come to an agreement to improve the aesthetics and limit the uses on the property.

The public hearing was closed.

Commissioner Bond moved to recommend approval of RZ 08-12 to the Bryan City Council and to adopt the written staff report and analysis, as the report, findings and evaluation of the Commission. Commissioner Beckendorf seconded the motion.

Commissioner Davila asked Mr. Haynes if any conditional use based on the ordinance would have to come back to the Commission for approval. Mr. Haynes confirmed this observation.

Chairperson Clark stated that it was with reluctance that the Commission granted the approval the first time, but that the applicant and staff have worked to create a great solution.

Commissioner Maxwell echoed the Chairperson's sentiments.

The motion passed with a unanimous vote.

6. Planning Variance PV08-13: Pedro Carillo-Pineda

J. Fulgham

A request for approval of a complete variance from the minimum 25-foot front building setback generally required on lots in Mixed Use Residential (MU-1) zoning districts, to legitimize previous construction of a carport that extends all the way to the front property line of property at 500 Ash Street, specifically occupying Lot 10 in Block 43 of the Oak Grove Park Subdivision in Bryan, Brazos County, Texas.

Ms. Fulgham presented a staff report (on file in Development Services Department). She stated that the applicant began construction of the carport without permits or site plan approval. A code

enforcement officer (Sandra Willis) then notified the property owner of the necessary permits and site plan approvals to continue construction legally and issued a stop work order. The applicant made the application for this variance request, but completed construction of the carport before the Commission was able to make their determination. Ms. Fulgham said the request is to legitimize the construction of the carport, which extends to the front property line and the setback. She then presented pictures of the property. Staff recommends denying the request for variance based on the following findings:

- Allowing a variance into the front setback area can potentially have the effect of creating a crowded streetscape which may have undesirable affects on area properties and that granting this requested front setback variance is detrimental to both the subject and area properties;
- Granting this request may not only adversely affect the physical character of development on this lot, but in this entire area; and
- The public benefit from continued compliance with minimum building setback standards, in this particular circumstance, is greater than requiring the applicant to remove the unlawfully constructed carport.

Responding to a question from Commissioner Beckendorf, Ms. Fulgham stated that the carport was constructed about a month ago. She said a code enforcement officer noticed the unlawful construction and had notified the applicant of the required permits when only the support posts had been constructed. She stated that in the time between the notification and when the applicant turned in the application for variance, construction had been completed.

Commissioner Davila asked if the stop work order was a document or a verbal order, and if Ms. Fulgham felt the applicant understood when he was informed about the ordinance and setback standard. Ms. Fulgham stated that the stop work order is a document that is posted on the site, and that the applicant appeared to understand the information given to him.

Commissioner Maxwell confirmed with Ms. Fulgham that the three posts on the front of the carport are on the front property line.

Responding to questions from Commissioner Davila, Ms. Fulgham stated that the three columns of the carport were in place at the time the stop work order was issued, but that the roof was not. She also stated that if the Commission denies the variance, the applicant must remove the structure or could appeal the Commission's decision to the City Council.

Responding to a question from Chairperson Clark, Ms. Fulgham stated that the carport extends into the power line right-of-way.

Responding to a question from Commissioner Beckendorf, Mr. Zimmermann clarified that the Plans Examiner in the Building Department issues stop work orders.

Commissioner Davila commented that in granting a variance of this nature, the structure would still have to meet all the necessary building requirements. Ms. Fulgham confirmed this observation.

The public hearing was opened.

Mr. Bryce Gullatt, 529 Helena Street, Bryan, came forward with a question. He asked what the cost would be to the applicant if they had to remove the structure. Ms. Fulgham confirmed that it would be the cost of demolition. Mr. Gullatt then asked what prevented the applicant from having the structure. Chairperson Clark answered that the City's development ordinance prevented it.

Mr. Pedro Carillo, applicant, came forward to speak in favor of the request. City Councilmember Al Saenz, 1416 Sandy Point Road, Bryan, translated for Mr. Carillo. He stated that the reason why he constructed the carport was because he was sent a notification that said he had to provide an improved parking surface and could not park on the grass in front of his house. He said that someone told him he could put a roof over the newly-improved area. He stated that that is why he constructed the carport. He admitted to his error and asked the Commission for a pardon.

Commissioner Davila asked if he understood what was going on at the time the stop work order was issued. Mr. Carillo stated that he understood that he was not supposed to finish the carport. He added that, in his opinion, the structure is not complete yet and that he wants to add piping and lumber.

Responding from a question from Chairperson Clark, Mr. Carillo stated that he stopped construction at the time he received the stop work notice.

Responding to questions from Commissioner Davila, Mr. Carillo stated that he understands what he can and cannot do with this property, and that he understands he has to remove the carport if the Commission denies the request.

Commissioner Chavarria asked how he received his stop work order. Mr. Carillo said that two days after he finished roofing, he received the notification.

Responding to a question from Commissioner Maxwell, Mr. Carillo stated that he has lived at this location for six years.

Commissioner Jones asked him if did he understood that he needed a permit when he was told to stop construction. Mr. Carillo said he went to the Development Services Department to get a permit, and although he did not receive a permit, he paid a fine. Mr. Zimmermann stated that the application fee for a variance request is \$150, which is what was paid.

Responding to a question from Commissioner Beckendorf, Mr. Carillo stated that someone told him he could not park cars in his yard, but that he had to park on asphalt with a roof structure.

Mr. Zimmermann stated that City ordinance prohibits parking in grass on a front yard, and the property owner must provide off-street paved parking on the lot. He stated that there is no requirement to install a roof over parking on a property.

Commissioner Davila asked Mr. Zimmermann if the only people that would enforce paved off-street parking would be the City of Bryan or Code Enforcement personnel. Mr. Zimmermann stated that he was correct, but suggested that the applicant could have heard this from another citizen.

Commissioner Beckendorf remarked that if Code Enforcement sent out a letter, there would have been some documentation. Mr. Zimmermann stated that while he was correct in this assumption, the warning may have been stated verbally.

Responding to this discussion, Mr. Carillo stated that two letters came from city that said he could not park on the grass.

Responding to a question from Commissioner Maxwell, Ms. Fulgham stated that the lot is 5,000 square feet in size.

Commissioner Bond stated that he was under the impression that the applicant continued construction after he was told to stop. Ms. Fulgham stated that she spoke to a female resident of the house and explained the violation to her. Ms. Fulgham said the resident made the comment "I told him not to" when she asked why the carport was completed.

Responding to a question from Commissioner Chavarria, Ms. Fulgham said that the carport was completed when she first visited the site.

Responding to questions from Commissioner Bond, Ms. Fulgham stated that the case was brought to them from the Code Enforcement Department, specifically Spanish-speaking Code Enforcement Officer Sandra Willis. She stated that the applicant was told he was in violation and that it was conveyed to him to stop construction.

Responding to a question from Commissioner Davila, Ms. Fulgham stated that the time between a verbal warning and a letter could be a day or two, or even a week.

Mr. Gary stated that the Commissioner should look at this information as background information, such as in a staff report. He cautioned that the building setback variance issue must be considered separately from the building permitting issue.

Commissioner Maxwell stated that this is a variance issue, not a code enforcement issue.

Mr. Gary advised that the applicant can get a recording and translation of the entire proceedings of this meeting, and that he has the ability to appeal the decision to the City Council; he will also get a written notification of the Planning and Zoning Commission's action.

The public hearing was closed.

Commissioner Bond moved to postpone consideration of this variance request. Commissioner Horton seconded the motion.

Commissioner Maxwell commented that a time and date should be added to the motion.

Commissioner Bond stated that they should have enough time to solve this problem once and for all, and to amend the ordinance.

Chairperson Clark disagreed with the motion. He stated that the carport extends all the way to the city right-of-way, which will impact the power line, and future improvements or repairs. He stated that while there may be communication issue, the variance issue has to be handled case by case and that the Commission's job is to make a decision on the variance.

Mr. Gary advised that the Commission should consider the current ordinance and not what may or may not be done in future.

Commissioner Maxwell stated that he echoes the Chairman's thoughts, and that whether the code enforcement procedure was done correctly is not of the concern of this Commission. He stated that he also echoes the Chairman's comments on a better notification procedure. He also emphasized the need for code enforcement officers to document their actions.

Commissioner Horton withdrew his second to the motion to postpone consideration of this request. Commissioner Bond withdrew his motion.

Commissioner Maxwell moved to reopen public hearing. Commissioner Beckendorf seconded the motion.

The motion passed with a unanimous vote.

The public hearing was reopened.

Mr. Louis Rodriguez, Jr., 1005 Cedar Run, College Station, came forward to speak in favor of the applicant having a driveway.

Commissioner Davila asked if he understood that the City is not saying the applicant cannot have a driveway and that the discrepancy is with the carport. Mr. Rodriguez said he understood.

Councilmember Al Saenz, 1416 Sandy Point Road, Bryan, came forward to speak on behalf of the applicant. He stated that perhaps when the applicant was informed that he cannot park on the grass, he assumed he had to put asphalt down.

Commissioner Clark reiterated that he cannot park on the grass.

Mr. Saenz stated that the applicant probably did not interpret someone telling him not to park on the grass as having to get a permit to build the structure.

Responding to a comment from Commissioner Horton, Mr. Zimmermann stated a fence may be erected on the property line within 25 feet of the edge of the pavement, but that any such fence cannot be any taller than 3 feet. He said in this case, three columns, not connected and without a roof, would not qualify as a fence.

The public hearing was closed.

Commissioner Maxwell moved to deny Planning Variance PV 08-13, because strict compliance will not result in undue hardship, and in so moving adopt the written staff analysis as the findings of this Commission as well as the facts upon which those findings are based, with the understanding that such findings and facts will be entered into the official minutes of this Planning and Zoning Commission meeting. Chairperson Clark seconded the motion.

Commissioner Bond commented that they need consistency in how they look at these issues. He agrees they are not all alike, and that there are problems with communication. He stated that it is hard to write ordinance for everything; but in cases like this, if this man is given a variance, he will need a building permit, the construction will be inspected, and he will have to meet building codes.

Commissioner Beckendorf agreed with Commissioners Bond and Maxwell. He said the difference in this case is that this structure was built after the applicant was told to stop.

Chairperson Clark reiterated that this is a variance issue, not a code enforcement issue. He stated that if the City has the need to improve its communication that is an issue that needs to be elevated to City Council. He stated that the applicant has the right to appeal to City Council.

Commissioner Davila stated that this is an unfortunate situation, but that there is a need to educate the citizens about city codes.

Chairperson Clark commented that construction of a carport requires a building permit. He stated if the carport will extend beyond the building setback lines, a variance will need to be received before construction can begin.

Commissioner Maxwell agreed, and stated that he would guess about 50% of citizens do not understand the ordinances.

Responding to a question from Commissioner Davila, Mr. Zimmermann stated that an action notification of the Commission's decision will be sent to the applicant tomorrow, and that if he has any questions, staff can inform him of his right to appeal. Mr. Zimmermann stated that once the applicant receives the action notification, it is up to him to contact the City.

Chairperson Clark stated that notifications would not be feasible if they were not in writing.

Commissioner Davila asked if, in specific cases, the city takes initiative to go to the applicant and give him/her the options available. Mr. Zimmermann stated that since the Commission has not denied a case in a long time, there has not been a need for that type initiative. He stated that in this case, staff will make sure the applicant understands the implications of the Commission's decision.

The motion passed with a vote of seven (7) in favor to one (1) in opposition. Commissioner Bond cast the vote in opposition.

7. ADJOURN

Without objection, Chairperson Clark adjourned the meeting at 7:08 p.m.

These minutes were reviewed and approved by the City of Bryan Planning & Zoning Commission on the 3rd day of **July, 2008**.

John R. Clark, Chairperson
Planning and Zoning Commission
City of Bryan, Texas

Lindsey Guindi, Planning Manager and
Secretary to the Planning and Zoning
Commission